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ABSTRACT

Federal and state court decisions and laws are the bases for the rights of Ohio students. Among these rights are the right of students (1) to an education regardless of race, creed or color; (2) to publish, distribute, or sell printed material on any topic not inflammatory, obscene, or libelous; (3) to due process before being punished by the deprivation of education; (4) to attend school while pregnant; (5) to be protected from verbal or physical abuse; and (6) to consult an attorney before answering any questions that might be used against them. Students need to be informed about rights through handbooks or law classes. Many of these student rights depend on students fulfilling certain responsibilities. Students must refrain from disruption of the school, violation of the rights of others, use of inflammatory methods, infraction of reasonable rules, and participation in illegal actions. School officials must go beyond merely respecting the legal rights of students and exercise fair and reasonable judgment in student dealings. Students educated by such officials are more likely to fulfill their own responsibilities both in school and in adult life. (Author/JM)

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STUDENT RIGHTS AND RESPONSIBILITIES IN OHIO SCHOOLS: CASES, LAWS AND RESULTS

by

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November, 1977

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Student Rights and Responsibilities in Ohio Schools

Cases, Laws and Results

Occasional Paper #3

by

William W. Wayson

Federal and state court decisions, and federal and state laws supplemented by Attorney General's Opinions spell out many rights for Ohio students. Those rights and the responsibilities that arise from them should be a part of the curriculum in all schools. The following list does not include all of the rights that students have nor does it show some of the fine points of law that may apply. However, knowledge about these details will surely change as courts and legislatures continue to deal with complex specific cases. It should help teachers, administrators, students, parents and school board members recognize their responsibilities for creating schools that truly prepare American citizens to preserve and use their freedoms in a continually changing and more complex world.

The mere existence of a law does not mean that students or any other

persons will receive the right. Local officials may not know that the law exists. They may interpret it differently from other persons. They may not agree with the law and may refuse to implement it. Rights are retained only by those who maintain vigilance and who insist upon receiving them. Sometimes it is necessary to employ an attorney or to take advantage of provisions for free legal advice (if it is available) to secure rights even though they are legally granted. In a few instances it may be necessary to enter into extensive and expensive court action to secure rights or to establish that they exist. There is no substitute for sound legal opinion about what action to take. Students who feel that their rights have been violated should always discuss the matter first with school officials and, if necessary, with the school board before taking serious legal steps. The matter may be settled more quickly and easily, and reasonable discussion is a better educational process than litigation, which should always be used as one of the final resources for settling human problems.

The Ohio Education Association lists seven rights in the preamble to the booklet on Rights and Responsibilities (1971). Though the details of those rights are not firmly established in law or in court decisions, they do affirm the basic rights to which the state school system (at least the department) is dedicated. They call upon all citizens to recognize

1) That all young citizens in the State of Ohio have a right to an education in Ohio's public schools;

2) That all young citizens in the State of Ohio should enjoy, in relationship to their level of maturity, the same fundamental Constitutional rights as are enjoyed by all other citizens;

3) That is the exercise of these rights, all young citizens bear a responsibility to refrain from violation of the fundamental rights of all other citizens;

4) That Ohio Schools bear the responsibility within the scope of their legally defined functions to educate students openly and frankly concerning their rights and their responsibilities as students, as members of society, and as human beings;

5) That those responsible for the administration and functioning of Ohio Schools have the right and the duty to protect with the highest standard of diligence and care the rights of all young citizens whom they serve;

6) That those responsible for the administration and functioning of Ohio schools have the right and the duty to take steps necessary, within the bounds of fundamental fairness, law, and justice, to insure that the rights of all students, and the right of Ohio citizens, to a functional and maximally effective educational system will be protected; and

7) That in general, every Ohio citizen enjoys a right to an optimally functioning educational system, and holds a commensurate responsibility, within the scope of his capacity, to foster and to maintain such a system.

Some specific rights have a reasonably well established legal base. They include these:

A. With a few exceptions specified in the Ohio Revised Code, all persons in Ohio between ages 6 and 21 have the right to an education at public expense in the public school to which they may be assigned by the local board of education in the district in which they legally reside. The exceptions have to be established through due process.

B. All persons of proper age, regardless their race, creed, or color, have a right to equal educational opportunities and equal access to courses of education and facilities in Ohio's public schools. No student is to be provided a school or a school faculty that is exclusively of one race if the segregation results from actions or inactions of state or district school boards or other governmental or school officials.

C. No student may be required to say the Pledge of Allegiance or to participate, to stand, or to leave the room while it is being said.

D. No student may be required to participate in a prayer, nor may the school initiate any Bible reading or praying in his or her hearing. However, no one may deny him or her the right to pray unless it is disruptive to the educational process.

E. Students or their guardians have the right to inspect all school records which pertain to them, to ask for removal of false material or other material detrimental to their well-being, and to place material that presents their side of a particular issue in the file. They have a right to deny access to their file to any persons other than school officials involved in their educational program. They do not have the right to see material that was placed in the file at a time when such material was considered confidential and unavailable to the student, though they may request to the authors that the material be withdrawn.

F. Students may engage in free speech or to wear armbands, buttons or other symbols so long as the statements or symbols do not become

libelous or obscene, do not materially disrupt classwork, do not invade the rights of others, do not involve substantial disorder on school premises (or if facts show that potential for disorder exists), or do not become inflammatory, libelous or obscene. School administrators' opinions about what is inflammatory, libelous or obscene usually is not sufficient evidence that they are .

G. Students may publish and distribute and even sell printed material on any topic which is not inflammatory, obscene, or libelous. Such material may be critical of school policy. If not obscene, it may contain vulgar or offensive words. The board may require the material to be shown to officials before distribution so long as the policies do not unnecessarily or unreasonably delay distribution of the material, do not establish arbitrary censorship, and are not vaguely applied to all student writing. Review procedures must have clear and reasonable standards for evaluation, provide for a brief period for review, a reasonable method for appealing negative decisions and state a time within which the appeal must be decided. School officials may regulate the times, places, and manner in which the paper will be distributed so as not to interfere with classroom activities or otherwise disrupt the school. Even a reasonable forecast of disruption may not be enough in itself to justify prohibiting the material from being distributed.

H. Students have the right to due process before being punished in any way that would deprive them of their right to an education (particularly

before suspensions and expulsions) unless their behavior warrants their immediate removal. Requirements for due process vary with the degree of deprivation, but generally includes the rights to know what rule was broken and to have reasonably known about the rule before the violation, to know what evidence there is that they broke the rule, to tell their side of the story, to know what punishment will be given (and to have reasonably known about it before the violation), and to appeal the decision if they feel they were wrongly accused or punished. In more serious cases due process may involve written notice to the student and his parents or guardian, formal hearings, the right to have a lawyer or other representative, maintaining a verbatim record of the hearings, the right to refute evidence and to cross-examine witnesses, and to formally appeal to higher authority as well as the right to sue for damages if wrongly or unreasonably punished. Sound educational practice indicates that students should receive maximum due process in even trivial cases.

I. Women have the right to attend school while pregnant unless medical officials have determined that attendance would be detrimental to the woman's physical well-being. It is doubtful that the school board can require pregnant women to attend separate classes or night classes, etc. Married students have the right to attend school and to participate in extracurricular activities.

J. Mothers have the right to return to regular school with all privileges after giving birth.

K. Handicapped students have the right to be educated in regular classrooms, to participate in all classes afforded other students and to participate in extracurricular activities unless participation would clearly be detrimental to the student's personal safety or well-being as determined by medical authority. Facilities must be made accessible to handicapped students.

L. Each student has the right to choose courses and programs in accord with personal goals and interests unless he or she does not meet express criteria for participation that are clearly stated and equally applied to all students or unless the student's behavior demonstrates that he or she does not intend to profit from the class.

M. Students have the right to be protected from verbal abuse or other humiliation from other students or from school personnel.

N. Students have the right to request that any school policy be changed, so long as their manner of asking does not disrupt classroom or school activities.

O. Students may attend school board meetings, appear before the school board and make statements according to the rules the board has established for making statements in the meeting.

P. Students or their parents, guardians, etc., may go to court to challenge any practice which they believe violates school board policy, state law or the U.S. Constitution. Such challenges require sound legal

advice and help and are expensive. They also take much time; so, any challenge through the courts must be taken quite seriously and the matter will generally not be solved for some time. Nevertheless, most rights for students and for teachers have become known because some student or teacher did go to court, especially in the past twenty years.

Q. Students have the right to be protected from physical abuse and physical punishment unless the punishment is reasonable and necessary for retaining discipline. They have a right to sue for damages if the punishment is excessive, unreasonable or unjustified.

R. Students have the right to consult an attorney before answering any questions that might be used against them in later prosecution. They have the right to refuse to answer questions which may be used against them in criminal prosecution. They may have to answer questions asked by school officials or school security guards who are performing their duty.

S. Students have the right not to go with a policemen or answer questions from a police officer unless the police officer places the student under arrest.

T. Students have a right to wear clothing or hairstyles that they choose unless the school board has adopted a code that is specifically stated and shows a clear relationship between the required dress or hairstyle and

the educational process or unless the clothing or hairstyle clearly disrupts the educational process or presents a provable possibility of doing so.

U. Students have a right to be protected from unreasonable searches of their persons, desks, lockers, or automobiles. The first three may be searched without the students' consent by school officials who are performing their duties and have reason to believe they will find objects or materials which would disrupt the educational process or be harmful to other persons or property in the school or on school premises. Though the matter isn't clarified, automobiles as private property may be protected by civil law governing searches of private property.

V. Students have the right to have their grades reflect only academic achievement.

W. Students have a right to graduate or "pass" if their academic work warrants no matter what their non-academic behavior has been.

Warning.--Many of the rights listed here may be lost if the student disrupts the classroom or school, violates the rights of others in the school, uses inflammatory methods, refuses to obey reasonable rules or directions, refuses to attend his or her classes or to do assigned work, or engages in illegal actions.

The purpose of having rights is to be free to accomplish all that one is able to accomplish. When rights are shared, all people should be able to accomplish more. All are strengthened thereby. The best protection

for rights is not court action, and in most instances it is not violent defenses. Rights are more likely to be undisputed by those who see that their own freedoms are supported and their own accomplishments are enhanced when they do not have to expend their energies in suppressing others. Rights are protected best and at least cost when every bystander can see that the free person accomplishes more than the fettered one and that the entire community is enrichened by his or her accomplishment.

Maintaining Rights in Schools

The first step to having rights is to know about them. Student groups, or community groups can do a lot to preserve rights and to improve educational opportunities for many students by publishing handbooks which help students and others know what their rights are. Handbooks might show what laws and what local policies affect those rights. They should also tell how students can get their rights— who to see, what phone numbers to call, where to get educationaly sound and should present the local situation clearly because each district may have somewhat different procedures and codes of conduct. Many agencies have published such handbooks; The Student Rights Handbook for Dayton, Ohio, prepared by the Center for the Study of Student Citizenship, Rights and Responsibilities and published by the Institute for Research and Development in Urban Areas at Central State University in Wilberforce, Ohio, is one such example. The State Education Department's Guidelines

have been referred to earlier. The Ohio School Board's Association has also published a handy guide entitled Student Due Process: What You Need To Know and Do (1976).

Many schools are teaching law classes both in elementary and high school classes. Teaching student rights and responsibilities is excellent content for social studies classes. The curriculum is deficient and the instruction inadequate if the social relationships within the school are not used as live case studies and labortories for teaching and practicing American democracy. Developing a discipline code or revising an existing one is one of the best ways to promote the faculty and student agreement which is the best basis for a well-disciplined school. School discipline codes and procedures cannot limit themselves merely to court-ordered requirements or they will fall short of what is necessary for providing effective instruction through either precept or example. For example, in the Ingraham decision, the court noted that "elimination or curtailment of corporal punishment would be welcomed by many as a societal advance," even though such punishment is not unconstitutional. In many cases dealing with dress codes or hair length, the decisions show amusement if not annoyance that any officials would make mountains out of such molehills. And in defining due process in the Goss case, the decision states that the Court requires "less than a fair-minded principal would impose upon himself."

The courts cannot and should not have to decide all of the issues on student rights and effective school discipline. Effective citizenship and effective discipline as well as effective education depends upon the daily exercise of fair and reasonable judgment in both personal and professional interactions in schools. The Supreme Court and lower courts alike are reluctant to interfere with professional judgment or state and local responsibilities to educate students. Only the most blatant violations ever get the Court's attention, meaning that many other violations of lesser nature occur all of the time unless competent and conscientious school officials take seriously their responsibilities to educate students as free citizens. Students educated by such officials and enjoying full rights are more likely than not to carry out their own responsibilities both in school and in adult life.